
UNITED STATES OF AMERICA

v.

OMAR AHMED KHADR

a/k/a "Akhbar Farhad"

a/k/a "Akhbar Farnad"

a/k/a "Ahmed Muhammed Khali"

)
) IN THE COURT OF MILITARY
) COMMISSION REVIEW
)

) APPELLANT MOTION FOR
) LEAVE TO FILE
) SUPPLEMENTAL AUTHORITIES
) AND SUPPLEMENTAL
) AUTHORITIES
)

) Case No. 07-001
)

) Tried at Guantanamo Bay, Cuba
) On 4 June 2007
)

) Before a Military Commission
) Convened by MCCO # 07-02
)

) Presiding Military Judge
) Colonel Peter E. Brownback III
)

**TO THE HONORABLE JUDGES OF THE COURT OF MILITARY
COMMISSION REVIEW**

Motion for Leave to File Supplemental Authorities

The Government respectfully requests that this Court allow the filing of the supplemental authorities listed below according to Rule 14(k) of the Court of Military Commission Review Rules of Practice. On Friday, 24 August 2007, the Government would like to incorporate the below listed authorities into its oral argument, and requests that the Court take judicial notice of the facts contained therein. Because these authorities will assist the Court to make a more informed determination of the issues under appeal, the Government's motion should be granted.

Supplemental Authorities

The Government respectfully submits the following supplemental authorities in support of its appeal in *United States v. Khadr*, CMCR, Case No. 07-001:

1. *Groh v. Ramirez*, 540 U.S. 551, 557 (2004) (The majority noted “we do not say that the Fourth Amendment forbids a warrant from cross-referencing other documents. Indeed most Courts of Appeals have held that a court may construe a warrant with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant.”); *United States v. Thomas*, 263 F.3d 805 (8th Cir. 2001)(for description in affidavit to be considered, the affidavit must be incorporated by reference into warrant); *United States v. Cherna*, 184 F.3d 403, 411–13 (5th Cir. 1999) (affidavit need not be physically attached to the warrant; it is enough if the affidavit is incorporated by reference). See also 1 IMWINKELRIED, ET AL, COURTROOM CRIMINAL EVIDENCE § 1928, at 920 (3d ed. 2006)
2. Mil. Com. R. Evid. 201
3. 2 IMWINKELRIED, ET AL, COURTROOM CRIMINAL EVIDENCE § 3011, n. 125 at 1408 (3d ed. 2006) citing *United States v. Herrera-Ochoa*, 245 F.3d 495, 501 (5th Cir. 2001) (“An appellate court may take judicial notice of facts, even if such facts were not noticed by the trial court”); *United States v. Esquivel*, 88 F.3d 722, 727 (9th Cir.) (“[W]e take judicial notice on appeal of the Government’s census data where it is presented to rebut similar data presented by Esquivel” in determining a Sixth Amendment jury trial issue concerning the fair cross-section requirement). . . ; *Ivezaj v. INS*, 84 F.3d 215, 219 (6th Cir. 1996) (“The Sixth Circuit consistently takes judicial notice of changed political circumstances in immigration cases”); *Washington Post v. Robinson*, 935 F.2d 282, 290-91 (D.C. Cir. 1991) (appellate court took judicial notice of current newspaper publicity surrounding a criminal conviction and defendant’s involvement and cooperation in that investigation); *United States v. Capua*, 656 F.2d 1033, 1038 n.3 (5th Cir. 1981) (judicial notice on appeal of records in federal district court that relate to petitioner’s habeas corpus claim).
4. *Marshall v. Bramer*, 828 F.2d 355, 358 (6th Cir. 1987) (The courts take judicial notice that “[t]he nature of the Ku Klux Klan, and its historic commitment to violence against blacks in particular, is generally known throughout this country and is not subject to reasonable dispute”).
5. *United States v. Lindh*, 212 F. Supp. 2d 541 (E.D. Va. 2002).
6. WEBSTER’S II, NEW COLLEGE DICTIONARY 19, 68 (2001 ed.) (affiliate as noun “An associate or subordinate.”).
7. 50 U.S.C. § 1804(e)(1)(A) and (B).

8. 5 U.S.C. §3348(b)(2).

Relief Requested

The Appellant respectfully requests that this Honorable Court grant the Government's Motion for Leave to File the Supplemental Authorities Brief and allow submission of the supplemental authorities.

//s//

Jeffrey D. Groharing
Major, U.S. Marine Corps
Prosecutor

A handwritten signature in black ink, appearing to read 'Keith A. Petty', with a long horizontal stroke extending to the right.

Keith A. Petty
Captain, U.S. Army
Assistant Prosecutor

//s//

Clayton Trivett, Jr.
Lieutenant, U.S. Navy
Assistant Prosecutor

//s//

Francis Gilligan
Office of Military Commissions
Appellate Prosecutor

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was emailed to Lieutenant Commander Kuebler on the 21st day of August 2007.

A handwritten signature in black ink, appearing to read "Kalet", with a long horizontal stroke extending to the right.

Keith A. Petty
Prosecutor
Office of Military Commissions